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No. 452

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Supreme Court of the United States

OCTOBER TERM, 1964

LEANDRO GOIRICELAYA UGALDE,
Petitioner,

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Respondent.

MIGUEL MORALES CALVO and MARIE OFELIA ABREU DE MORALES, his wife,
Petitioners,

v.

THE CROWN LIFE INSURANCE COMPANY, a Canadian corporation,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENTS IN OPPOSITION

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September 28, 1964

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether the decisions of the Supreme Court of Florida, holding that no cause of action has arisen for a breach of insurance contracts so long as the insurers have not refused to make payment in accordance with the law governing the contracts, rest on an adequate and independent state ground.

COUNTERSTATEMENT OF THE CASE

Petitioners' statement of the case concludes with an assertion that the decisions they seek to have reviewed were predicated "solely upon" a federal question. (Petition, p. 5.) The statement is incorrect.* Moreover, Petitioners fail in their statement to mention two sets of decisions of the Supreme Court of Florida, made on Petitioners' motions in these very cases, which wholly dispel any possible doubt that the original decisions rest independently on questions of state law entirely apart from any federal question.** The omission and incorrect conclusion call for a counterstatement of the case.

Prior to 1948 Petitioners, nationals and until quite recently residents of Cuba, applied to Respondents' Cuban branches for policies of life insurance. (UR 1-4, 22-23, 34; CR 1-4, 28-29.)*** These were issued

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* The Petition contains other assertions contrary to fact. For example, it contends that the policies "are in danger of default." (Petition, p. 6) This is not true. The policies contain standard non-forfeiture provisions. (Photostatic copies of the insurance policies involved are attached to the complaints in both cases.) For present purposes it suffices to say that even if true, the contention involves questions solely of state law which have been disposed of by the Florida state courts.

** The two subsequent decisions of the Supreme Court of Florida and related materials appear in the appendix to this brief.

*** The Record before this Court consists in large part of the two records transmitted to the Supreme Court of Florida by the Clerk of the District Court of Appeal of Florida in these two cases. In this brief references designated "UR" are to the transcript of record of the District Court of Appeal in the *Ugalde* proceeding. References designated "CR" are to the transcript of record of the District Court of Appeal in the *Calvo* proceeding. References are also made in this brief to the materials included in Petitioners' appendix and to materials included in the appendix to this brief, *infra*. Certified copies of the materials included in both appendices have been filed with the Court.

in Cuba in the Spanish language and became effective there. (UR 4; CR 4.) At this time the United States dollar was legal tender in Cuba and the contracts were expressed to be payable in dollars. Shortly thereafter laws were passed and became effective substituting the Cuban peso for the dollar as legal tender for the satisfaction of debts at one peso to the dollar. (UR 15-17, 29-30; CR 17-19, 23-24.)

Later, under the Castro regime, currency control laws were enacted, making it illegal for Respondents to make payment outside of Cuba on any Cuban insurance contract. (UR 18-19, 29-30; CR 20-21, 23-24.) At that time, and until after the rendering by the Florida Supreme Court of the *Ugalde* and *Calvo* decisions of which review is here sought, Cuba and the United States were both members of the International Monetary Fund, the Articles of Agreement of which provide that the courts within one member's territory shall not enforce a foreign exchange contract in violation of certain currency control laws of another member of the Fund. (Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, art. VIII, section 2(b), 60 Stat. 1401.)

Petitioners made demand on the Respondents in Florida for the payment of the cash surrender values of the policies in dollars in the United States. (UR 2; CR 2.) Respondents refused on the ground that their obligation under the insurance contracts and applicable Cuban law was to pay in pesos in Cuba, and further, on the ground that they would be subjected to severe penalties were they to violate the Cuban currency control laws of 1961. (UR 11; CR 12.) Respondents tendered payment in pesos in Cuba. (UR

23; CR 30.) The Petitioners declined to accept such payments and brought suit in Florida.

The trial court, without opinion, granted Petitioners' motions for summary judgment. (UR 36-37; CR 31-32.) Respondents appealed to the District Court of Appeal of Florida, urging that under Florida conflict of laws rules the contracts were governed by the law of Cuba. Since under that law the obligations were peso obligations payable in Cuba, Respondents contended that no breach of contract had occurred and that therefore Petitioners had no cause of action. This fact, Respondents contended, was dispositive of the case. Respondents further argued that to ignore Respondents' defenses under Cuban law would violate the Fourteenth Amendment and to require payment here would also constitute a violation of international law including the obligations of the United States under the Articles of Agreement of the International Monetary Fund. (UR 53; CR 46.) Petitioners argued that Cuban law should be ignored and that under Florida law they were entitled to the recovery they sought. (UR 55; CR 47.)

The Florida District Court of Appeal held, citing a number of Florida cases, that under established Florida rules of conflict of laws the contracts were governed by the law of Cuba, since "neither Florida nor any jurisdiction other than Cuba had any significant contacts with regard to the obligations of the insurance policy." (Petition, p. App. 12.)* Despite its

* The opinion went on to note that for a Florida court to strike down defenses valid under the law of Cuba would contravene the Fourteenth Amendment and the Declaration of Rights of the Constitution of Florida. The opinion made no reference to any obligation of the United States as a member of the International Monetary Fund.

ruling as to the applicability of Cuban law the court awarded judgment "in United States dollars for such sum as shall represent and equal the value" of the pesos owing under the contracts. (Petition, p. App. 24.)

The Supreme Court of Florida granted certiorari.* It held that "the District Court of Appeal properly held the policy was a Cuban policy covered by Cuban law" and stated that "we refer to the authorities cited in and the rationale of that opinion with approval." (Petition, pp. App. 2, 3.) The Florida Supreme Court went on to hold that the District Court of Appeal had erred in entering judgment for Petitioners. Its opinion stated:

> "The petitioner [insurance company] having, upon demand, offered to make payment of the cash surrender value of the policy in accordance with the terms of the contract and the law of Cuba, which governs it, in Cuban pesos in Havana, there was no breach of contract and no cause of action against petitioner [insurance company]. That portion of the judgment of the District Court of Appeal which directed the entry of the judgment for the plaintiff is reversed and the cause remanded with instructions that the Circuit Court be directed to dismiss the complaint." (Petition, pp. App. 3-4.)

Respondents had alternatively argued before the Florida Supreme Court, as they had before the District Court of Appeal, that not only Florida rules of conflict of laws, but also the Fourteenth Amendment and the International Monetary Fund Agreement, required

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* The court granted certiorari in both cases. It first decided the *Ugalde* case and then held that the *Ugalde* decision controlled the *Calvo* case. (Petition, p. App. 7.)

application of Cuban law. The District Court of Appeal had not reached the question of the significance of the Agreement. In its opinion the Supreme Court also accepted Respondents' alternative argument as to the Agreement in the following terms:

> "The Cuban laws relating to the establishment of currency control are similar to those which have been enacted in this country with respect to our own currency and are not violative of United States policy. The Florida Courts are obligated by the International Monetary Fund Agreement to apply the cited Cuban laws to the contract here involved." (Petition, p. App. 3.)

The court noted that a "similar" case had been decided by the Louisiana Court of Appeals. (*Theye y Ajuria* v. *Pan-American Life Ins. Co.*, 154 So.2d 450 (La. App. 4th 1963).)

The *Theye y Ajuria* case was subsequently reversed by the Supreme Court of Louisiana. Petitioners moved the Florida Supreme Court for a rehearing, citing the decision of the Supreme Court of Louisiana. (See p. 1a, *infra*.) Respondents, in reply, pointed out that "the reversal of the Ajuria case by the Louisiana Supreme Court has nothing to do with the Ugalde decision" because the *Ugalde* decision rested independently upon principles of state law. (See p. 4a, *infra*.) The Florida Supreme Court noted its recognition of this fact by stating in its per curiam opinion denying the petition:

> "The opinion of the Louisiana Court of Appeal was not vital to our original decision, so the reversal by the Supreme Court of that state does not change our conclusion." (Pp. 5a-6a, *infra*.)

Thereafter Cuba resigned from membership in the International Monetary Fund. Petitioners thereupon

filed with the Florida Supreme Court a "Motion to Recall the Mandate and for a Reconsideration and Modification, or Reversal of the Final Judgment." Again Petitioners argued that the Florida Supreme Court's decision depended upon the applicability of the International Monetary Fund Agreement. (See p. 7a, *infra.*) Again, Respondents' reply pointed out:

> "This Court's decision of February 24, 1964 was clearly based upon the ground that Defendant was not in breach of any contractual obligation owed Plaintiff. . . . This holding is not affected by Cuba's membership in the International Monetary Fund Agreement." (Pp. 9a, 10a, *infra.*)

The Florida Supreme Court "upon consideration" of the matters presented in Petitioners' motions ordered that they be denied. (P. 11a, *infra.*)*

REASONS FOR DENYING THE WRIT

As noted above the Florida District Court of Appeal, finding that only Cuba had any significant contacts with the insurance contracts here involved, held, citing Florida cases, that under settled Florida con-

* Photocopies of Petitioners' motions, which were circulated among the members of the Supreme Court of Florida, have been certified to this Court by the Clerk of the Supreme Court of Florida. The *Ugalde* motion carries the following marginal notation: "Deny—Monetary Fund agreement was one of two grounds for our judgment. See last paragraph of opinion." The *Calvo* motion carries the following marginal notation: "Deny—see last par of Ugalde—Monetary Fund just one ground."

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* The holding is fully consistent with conflict of laws principles applied by this Court prior to the decisions in Erie R. Co. v. Thompkins, 304 U.S. 64, and Klaxon v. Stentor Elec. Mfg. Co., 313 U.S. 487. See, *e.g.*, Northwestern Mut. Life Ins. Co. v. McCue, 223 U.S. 234. Only a contrary holding would have raised a federal constitutional issue. See, *e.g.*, Home Ins. Co. v. Dick, 281 U.S. 397.

that court's opinion constituted "a scholarly and extended treatment of applicable law," and specifically noted its "approval" of "the authorities cited in and the rationale of that opinion." In so doing it squarely adopted the lower court's holding, made without any reference to or reliance upon the International Monetary Fund Agreement, that the application of Cuban law was required by Florida rules of conflict of laws. The Florida Supreme Court differed with the lower court only in recognizing that, Respondents having tendered payment of pesos in Havana, "there was no breach of contract and no cause of action * * *." (Petition, p. App. 3.)

The Supreme Court's additional observation that even apart from Florida's traditional and conventional conflict rules "the Florida courts are obligated by the International Monetary Fund Agreement to apply the cited Cuban laws to the contract here involved" constitutes at most an alternative ground of decision. Any conceivable doubt as to this fact is dispelled by the court's determination on rehearing, after reversal of an intermediate Louisiana court decision cited in its opinion that had dealt with the significance of the International Monetary Fund Agreement, that that opinion "was not vital to our original decision," and by the court's adherence to its judgment following Cuba's withdrawal from the Agreement.* Under these circumstances denial of the Petition is required by reason of this Court's

> "settled rule that where the judgment of a state court rests upon two grounds, one of which is

* There is no basis whatsoever for the assumption in Petitioners' argument that the Florida Supreme Court disagreed with the holding in Stephen v. Zivnostenska Banka, 31 Misc. 2d 45, 140 N.Y.S. 2d 323 (Sup. Ct. 1955).

federal and the other nonfederal in character, our jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp.* v. *Muller,* 296 U.S. 207, 210.

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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The materials reproduced in this Appendix are drawn from the case of *Confederation Life Association* v. *Ugalde*. For the most part, identical petitions, motions and orders were filed and entered in the companion proceeding of *The Crown Life Insurance Company* v. *Calvo*.

APPENDIX

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1964

Case No. 32,780

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Petitioner,

v.

LEANDRO GOIRICELAYA UGALDE, *Respondent.*

Case No. 32,803

LEANDRO GOIRICELAYA UGALDE, *Cross-Petitioner,*

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Cross-Respondent.

Petition for Rehearing

NOW COMES the Respondent and Cross-Petitioner in the above cause, LEANDRO GOIRICELAYA UGALDE, and respectfully petitions this Honorable Court, as follows:

This Honorable Court entered its Opinion herein, filed February 24, 1964, persuaded by the Louisiana intermediate Court of Appeal case, THEYE Y AJURIA v. PAN AMERICAN LIFE INS. CO., 154 So. 2d. 150.

The said Louisiana case was reversed by the Supreme Court of Louisiana on February 24, 1964. This case has not yet been reported. The Respondent and Cross-Petitioner, therefore, submits and attaches hereto a photostatic copy of the said Opinion.

The Louisiana Supreme Court in reversing the Intermediate Court of Appeal said that counsel's last argument was to the effect that the International Monetary Fund

Agreement was a defense to the action. (See Page "6" of the Opinion). The Supreme Court said:

> "* * * these laws (relied on by defendant) do not apply to cover the situation of a Cuban national enforcing an executory contract in the forum of another jurisdiction according to the terms of an obligation existing prior to the passage of these laws. Further, we do not believe that such laws and decrees can have any force and effect over the persons of these litigants who are not only without Cuba, but, as refugees, are not subject to its in personam jurisdiction. * * *"

(Pages "6" and "7" of Opinion)

WHEREFORE, the Respondent and Cross-Petitioner herein respectfully prays that this Honorable Court reconsider its opinion, based upon the fact that it relied upon an Intermediate Appeal Court case, which has now been reversed by the Supreme Court.

DATED: Miami, Florida
February 28, 1964.

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Reply to Petition for Rehearing

Respondent and Cross-Petitioner, LEANDRO GOIRICELAYA UGALDE, has petitioned this Honorable Court for a rehearing in this cause on the ground that its decision herein, filed February 24, 1964, was "persuaded by the Louisiana Intermediate Court of Appeal case Theye y Ajuria v. Pan-American Life Ins. Co., 154 So. 2d 150" (*sic*, for 450) and

the further ground that this "Louisiana case was reversed by the Supreme Court of Louisiana on February 24, 1964."

Petitioner and Cross-Respondent, CONFEDERATION LIFE ASSOCIATION, respectfully submits that petition for rehearing should not be allowed in this case.

1. The decision of this Court was predicated first upon the principle that no breach of contract had occurred and that Respondent and Cross-Petitioner therefore had no cause of action.

2. Under established conflict of laws principles the contract in this case is governed and controlled by Cuban law and Petitioner and Cross-Respondent had valid defenses under that law.

3. This Court in addition approved the opinion of the lower court that to ignore a defense lawfully vested under the law of Cuba would be a denial of due process of law. While disagreeing with the judgment of the District Court, this Court in its opinion, as understood by Petitioner and Cross-Respondent, approved the "scholarly and extended treatment of applicable law in the opinion below." This included, we submit, the following:

> "When a suit is brought on a contract in a jurisdiction other than the one which governs the rights and obligations thereunder, a defense lawfully vested under the law of the latter jurisdiction may not be ignored by the forum if that state had no significant connection with the contract obligations. Rejection of such rights under the contract, asserted as a defense, is a deprivation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Section 12 of the Declaration of Rights of Florida."

4. The decision of this Court stated that "The Florida courts are obligated by the International Monetary Fund

Agreement to apply the cited Cuban laws to the contract here involved."

The Ajuria v. Pan-American Life Ins. Co. case was not cited by this Court in support of this conclusion. It was referred to by this Court simply as "a similar cause". The reversal of the Ajuria case by the Louisiana Supreme Court has nothing to do with the Ugalde decision. Assuming, arguendo, it did, the holdings mentioned in Paragraphs 1, 2 and 3 above were independently dispositive.

For the foregoing reasons it is respectfully prayed that the petition for rehearing be denied.

DATED this 6th day of March, 1964.

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Not final until time expires to file rehearing petition and if filed, determined.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A.D. 1964

Case No. 32,780

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Petitioner,

v.

LEANDRO GOIRICELAYA UGALDE, *Respondent.*

Case No. 32,803

LEANDRO GOIRICELAYA UGALDE, *Cross-Petitioner,*

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Cross-Respondent.

Opinion filed April 8, 1964

Writs of Certiorari to the District Court of Appeal, Third District

Shutts, Bowen, Simmons, Prevatt & Boureau, Cotton Howell, Covington & Burling, and John G. Laylin (Washington 5, D. C.), for Petitioner and Cross-Respondent

Nestor Morales, for Respondent and Cross-Petitioner

On Petition for Rehearing

PER CURIAM.

By petition for rehearing the respondent points out that the Louisiana Court of Appeal decision in Theye Y. Ajuria v. Pan American Life Insurance Company, 154 So. 2d 450, was reversed by the Supreme Court of Louisiana on February 24, 1964. The opinion of the Louisiana Court of Appeal

was not vital to our original decision, so the reversal by the Supreme Court of that state does not change our conclusion. The petition for rehearing is therefore denied.

DREW, C.J., THOMAS, ROBERTS, THORNAL, O'CONNELL and CALDWELL, JJ., concur

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IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1964

Case No. 32,780

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
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v.

LEANDRO GOIRICELAYA UGALDE, *Respondent.*

Case No. 32,803

LEANDRO GOIRICELAYA UGALDE, *Cross-Petitioner,*

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Cross-Respondent.

Motion to Recall the Mandate and for a Reconsideration and Modification, or Reversal of the Final Judgment

COMES NOW, LEANDRO GOIRICELAYA UGALDE, by his undersigned attorneys, and moves the Court to recall the mandate heretofore entered in this matter, dated April 25, 1964 and reconsider and modify or reverse the judgment as therein entered. In support of this Motion, Movant would advise the Court that this matter had heretofore been certified to this Court by the District Court of Appeal of Florida, Third District, as being a question of great public

interest; that it is cannot be denied in view of the large number of cases that have been held in abeyance by the Circuit Court of the Eleventh Judicial Circuit, pending a determination of this matter, and the great interest in these cases as exhibited by various publications throughout the country.

The decision of this Court in this case approved the rationale of the District Court's opinion and its conclusion, with the exception that it held, because of the membership by Cuba and the United States of America in the International Monetary Fund Agreement and by the expressed provisions of that Agreement, particularly Article VIII (2)(b), the matter cannot be enforced in this country. However, subsequent to the rendition of the original opinion of this Court in this matter, Cuba withdrew from the Fund. The provisions of the Fund Agreement, particularly Article VIII, (2)(b), are for the benefit of member states, and not for the benefit of private parties. Since Cuba is no longer a member state of the Fund, and since the date of proposed relief determines the applicability of Article VIII, a decree granting recovery to the Petitioners will not now violate the provisions of the Fund Agreement. See *Stephens vs. Zivnostenska Banka National Corporation*, 140 N.Y.S. 2d 323, 326. This Court did not, as the Referee did in Stephens, "provide that this phase could be reopened if Cuba withdrew voluntarily or otherwise from the Fund organization."

To prevent manifest injustice and misinterpretation of this question of great public interest, the Supreme Court should reconsider, revise, reform, or modify its judgment to conform with the changed conditions.

This motion is filed with this Court under the authority found in the opinions of this Court in *Chapman vs. St. Stephen's Protestant Episcopal Church*, Florida 1932, 138

So. 630, and *State vs. City of Avon Park*, Fla. 1933, 151 So. 700.

Respectfully submitted,

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Opposition to Motion to Recall Mandate, Etc.

On February 24, 1964 this Court rendered a final decision on the merits in this case, reversing in part the decision of the District Court of Appeal below and remanding the case with directions that the complaint be dismissed. This Court expressed its grounds for decision as follows:

> "The petitioners having, upon demand, offered to make payment of the cash surrender value of the policy in accordance with the terms of the contract and the law of Cuba, which governs it, in Cuban pesos in Havana, there was no breach of contract and no cause of action against the petitioner."

The opinion added a second reason, referring to the treaty obligations of the United States under the International Monetary Fund Agreement not to enforce exchange contracts in violation of the currency control laws of members of the International Monetary Fund.

On February 28, 1964, Plaintiff* petitioned this Court for a rehearing, alleging that the International Monetary Fund Agreement did not preclude recovery and citing the opinion of the Supreme Court of Louisiana in the case of *Ajuria* v. *Pan-American Life Ins. Co.*** Defendant responded to this Petition for Rehearing on March 6, 1964. This Court denied Plaintiff's Petition for Rehearing on April 8, 1964. Now Plaintiff again seeks to have this Court's final decision on February 24, 1964 reconsidered, this time by motion. And once again Plaintiff's ground is that the International Monetary Fund does not require enforcement of the Cuban exchange control measures.

In the first place Plaintiff's motion should be rejected on the ground that only one petition or motion seeking reconsideration of a final decision is permitted by the Rules of this Court. Florida Appellate Rule 3.14(e) explicitly provides that after one petition for rehearing has been filed by a party "no further petition for rehearing *or motion* will be received or filed by the clerk or considered by the Court." (Emphasis added.) Plaintiff's motion is clearly in violation of this Rule.

In any event, Plaintiff's motion has no more merit than did his earlier petition for rehearing, and for the same reasons. This Court's decision of February 24, 1964 was clearly based upon the ground that Defendant was not in breach of any contractual obligation owed Plaintiff. Both this Court and the District Court of Appeal recognized that the contract was governed by Cuban law. By its own terms

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* As in Petitioner's briefs in this Court, the parties are referred to in accordance with their position in the trial court. The Plaintiff, Leandro Goiricelaya Ugalde, is the Respondent in this Court. The Defendant, Confederation Life Association, is the Petitioner in this Court.

** The *Ajuria* case involved a policy issued in New Orleans by an American company and, by the express terms of the policy, payable in New Orleans.

the contract is to be performed in Havana, Cuba. Consequently, since Defendant has tendered payment in Cuba in accordance with applicable and governing Cuban law, this Court held that Defendant is not in breach of any contractual duty owed Plaintiff and that no cause of action had arisen in Plaintiff's favor under applicable Cuban law to be enforced by a Florida court. This holding is not affected by Cuba's membership in the International Monetary Fund Agreement.

Respectfully submitted,

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IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1964
WEDNESDAY, JULY 1, 1964

Case No. 32,780

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Petitioner,

v.

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Case No. 32,803

LEANDRO GOIRICELAYA UGALDE, *Respondent.*

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Cross-Respondent.

Leandro Goiricelaya Ugalde, respondent and cross-petitioner in the above entitled cause, has filed a motion for recall of the mandate and for a reconsideration and modification of the judgment of this Court, and upon consideration thereof, it is ordered that said motion be and the same is hereby denied.